Suria Active Resources Sdn Bhd v The Director General of Environmental Quality

HIGH COURT (KUALA LUMPUR) — APPLICATION FOR JUDICIAL REVIEW NO WA-25–88–05 OF 2016
HANIPAH FARIKULLAH J
6 FEBRUARY 2017

Administrative Law — Judicial review — Application for — Fire broke out during construction of building — Batteries affected to be disposed of — Public authority issued letters to contractor to dispose of affected batteries at specific place — Whether there was serious impropriety in issuing letters — Whether applicant person adversely affected by decision of public authority — Rules of Court 2012 O 53 r 2(4)

The applicant was a contractor in the business of waste handling while the respondent was a public authority under the Enviromental Quality Act 1974 ('the Act'). There was a power plant constructed by Tenaga Nasional Bhd in Manjung, Perak. Tenaga Nasional Bhd appointed Daelim Malaysia Sdn Bhd ('Daelim') as the contractor for the construction. During constructed, a fire broke and 150,000kg of batteries, stored at the fourth floor of the building, were affected. Daelim awarded a contract to the applicant to dismantle and clear the affected batteries and to dispose of the same. The applicant entered into a contract with Globe Cycle Manufacturing Sdn Bhd ('Globe Cycle'). Under the contract, Globe Cycle would pay the applicant a sum of RM3.50 per kg, a total sum of about RM525,000 for the whole lot of 150,000kg of the affected batteries. The respondent issued a letter to Daelim ('letter dated 8 April 2016'), classifying the affected batteries as schedule waste under code SW422 and requiring the affected batteries to be disposed of to the premises of Kualiti Alam Sdn Bhd. The respondent then issued a second letter ('letter dated 5 May 2016') to TNB, reinforcing the letter dated 8 April 2016. The applicant refused to dispose of the affected batteries, as required by the respondent. Hence, this application for judicial review of the two letters on the grounds that: (a) there was a serious impropriety in the issuance of the two letters; and (b) there was no reason why the respondent must specifically prefer Kualiti Alam Sdn Bhd as the only contractor to undertake the task. The respondent raised a preliminary objection that the applicant had no locus standi to file this application as it was not a person who was adversely affected by the decision of the respondent within the meaning of O 53 r 2(4) of the Rules of Court 2012 ('the ROC').

Held, dismissing the application:

(1) The Director General of Environmental Quality had no knowledge of the agreements between the applicant and Daelim and the applicant and Globe Cycle. The person affected by the decision of the respondent was Daelim, being the party directed by the respondent to dispose the schedule waste to Kualiti Alam on or before 9 May 2016. Daelim would bear the consequences of being imposed a fine and/or imprisonment for failing to comply with the order. The applicant did not fulfill the criteria of an adversely affected person under O 53 r 2(4) of the ROC (see paras 22–24).

[Bahasa Malaysia summary

Pemohon adalah kontraktor yang menjalankan perniagaan pengendalian sisa manakala responden adalah pihak berkuasa awam bawah Akta Kualiti Alam Sekeliling 1974 ('Akta'). Terdapat loji kuasa yang dibina oleh Tenaga Nasional Bhd di Manjung, Perak. Tenaga Nasional Bhd melantik Daelim Malaysia Sdn Bhd ('Daelim') sebagai kontraktor pembinaan. Semasa pembinaan, berlaku kebakaran dan 150,000kg bateri, yang disimpan di tingkat empat bangunan, telah terjejas. Daelim memberikan kontrak kepada pemohon untuk memunggah dan membersihkan bateri yang terjejas dan melupuskan kesemuanya. Pemohon menandatangani kontrak dengan Globe Cycle Manufacturing Sdn Bhd ('Globe Cycle'). Di bawah kontrak ini, Globe Cycle akan membayar pemohon sejumlah RM3.50 sekilogram, jumlah keseluruhan kira-kira RM525,000 untuk keseluruhan 150,000kg bateri yang terjejas. Responden mengeluarkan surat kepada Daelim ('surat bertarikh 8 April 2016'), mengklasifikasikan bateri yang terjejas seperti jadual sisa di bawah kod SW422 dan menetapkan agar bateri yang terjejas dilupuskan di premis Kualiti Alam Sdn Bhd. Responden kemudian mengeluarkan surat kedua ('surat bertarikh 5 Mei 2016') kepada TNB, menguatkuasakan surat bertarikh 8 April 2016. Pemohon enggan melupuskan bateri yang terjejas, seperti yang dikehendaki oleh responden. Oleh itu, permohonan ini untuk semakan kehakiman terhadap kedua-dua surat dengan alasan: (a) terdapat satu kesalahan yang serius dalam pengeluaran dua surat tersebut; dan (b) tidak ada sebab mengapa responden mestilah memilih Kualiti Alam Sdn Bhd secara khusus sebagai satu-satunya kontraktor untuk melaksanakan tugas tersebut. Responden membangkitkan bantahan awal bahawa pemohon tidak mempunyai lokus untuk memfailkan permohonan ini kerana ia bukanlah orang yang terjejas oleh keputusan responden dalam pengertian A 53 k 2(4) Kaedah-Kaedah Mahkamah 2012 ('KKM').

Diputuskan, menolak permohonan:

(1) Ketua Pengarah Kualiti Alam Sekitar tidak mengetahui perjanjian antara pemohon dan Daelim dan pemohon dan Globe Cycle. Orang yang terjejas oleh keputusan responden adalah Daelim, sebagai pihak yang diarahkan oleh responden untuk membuang sisa kepada Kualiti Alam

pada atau sebelum 9 Mei 2016. Daelim akan menanggung akibat dikenakan denda dan/atau penjara kerana gagal mematuhi perintah itu. Pemohon tidak memenuhi kriteria orang yang terjejas di bawah A 53 k 2(4) KKM (lihat perenggan 22–24).]

Notes

For cases on application for judicial review, see 1(1) *Mallal's Digest* (5th Ed, 2017 Reissue) paras 329–407.

Cases referred to

Malaysian Trade Union Congress & Ors v Menteri Tenaga, Air dan Komunikasi & Anor [2014] 3 MLJ 145, FC (refd)

Legislation referred to

Environmental Quality Act 1974
Rules of Court 2012 O 53 r 2(4)
Rules of the High Court 1980 O 55 r 2(4)

Arun Kasi (Saravanadevi & Assoc) for the applicant.
Lina Hanini Ismail (Senior Federal Counsel, Attorney General's Chambers) for the respondent.

Hanipah Farikullah J:

INTRODUCTION

[1] The applicant has filed a judicial review proceedings for leave to seek for the following order:

(a) that leave be granted for thhe applicant to make this application for judicial review of the letter of the Department of Environment, Teluk Intan dated 8 April 2016 addressed to Daelim Malaysia Sdn Bhd with reference No (B) A91/110/602/000 Jld 10(19) ('first letter') and the letter of the Department of Environment, Ipoh dated 5 May 2016 addressed to TNB Manjung Five Sdn Bhd with reference No AS (B) A41/010/100/009 Jld (36)(1) ('the second letter');

(b) that no action be taken on the first letter and the second letter pending disposal of the judicial review application; and

(c) that the first letter and the second letter be quashed, or in the alternative, reference to Kualiti Alam Sdn Bhd in para 3.1 of the first letter be directed to be amended to read as 'any contractor duly licensed for the purpose by this Department'.

[2] The application for leave to commence judicial review application is

made by thhe applicant due to the issuance of:

(a) the letter dated 8 April 2016 by the Department of Environment, Teluk Intan to the General Manager of Daelim Malaysia Sdn Bhd instructing the disposal of the scheduled waste to Kualiti Alam Sdn Bhd on or before 9 May 2016; and

(b) the letter dated 5 May 2016 by the Department of Environment, Ipoh to the Project Manager of TNB Manjung Five Sdn Bhd allowing the disposal of the scheduled waste to be extended until 18 May 2016.

THE APPLICATION

[3] In support of its application, the applicant in gist relied on the following grounds:

(a) there is a serious impropriety in issuance of the two letters; and

(b) there is no reason why the respondent must specifically prefer and name Kualiti Alam Sdn Bhd as the only contractor to undertake this task, despite other contractors being equally licensed by the respondent for the same purpose.

THE PARTIES

[4] The applicant is a contractor in the business of waste handling.

[5] The respondent is a public authority empowered and obligated under the Environmental Quality Act 1974 ('the Act').

THE BACKGROUND FACTS

[6] The background facts as submitted by the applicants are as follows.

[7] There was a power plant constructed by TNB in Manjung (Perak). TNB appointed Daelim as the contractor for the construction.

[8] During construction, a fire broke and a huge quantity of batteries stored was affected by the fire. The affected batteries weighed about 150,000kg. They were stored at fourth floor of the relevant building when the fire incident took place.

[9] Daelim awarded a contract to the applicant to dismantle and clear the affected batteries and to dispose of the same.

[10] The applicant dismantled and brought down the affected batteries to a

waste storage area at ground level within the construction site.

[11] The applicant entered into a contract with Globe Cycle Manufacturing Sdn Bhd ('Globe Cycle') for the disposal of the batteries. Under the contract, Globe Cycle would pay the applicant a sum of RM3.50 per kg, a total sum of about RM525,000 for the whole lot of 150,000kg of the affected batteries. It was an ordinary practice in the industry to sell wastes that can be recycled.

[12] Globe Cycle is duly licensed by the respondent to handle wastes scheduled as SW 422 and to recycle the same. The license Globe Cycle is as follows:

#	Name of Contractor/Address	License No	Type of License	Waste Groups /Vehicle Registration No
12	GLOBECYCLE MANUFACTURING SDN BHD: LOT 1476, KAWASAN PERINDUSTRIAN PADANG MEHA, MUKIM PADANG MEHA, DAERAH KULIM, KEDAH 09600	004551	Facilities: Pemerolehan Kembali Luar Tapak	SW104, SW204, SW206, SW322, SW323, SW401, SW409, SW410, SW422

[13] Globe Cycle is one among the 26 companies licensed to 'recycle waste scheduled as SW422' coming under the category 'Type of license — Facilities: Pemerolehan Kembali Luar Tapak'.

[14] The respondent issued a letter on 8 April 2016 addressed to Daelim classifying the affected batteries as scheduled waste under code SW422 and requiring the affected batteries to be disposed of to the premises of Kualiti Alam Sdn Bhd. The relevant parts of the letter read as follows:

> NOTIS ARAHAN DI BAWAH SEKSYEN 31(1) DAN SEKSYEN 37(1) AKTA KUALITI ALAM SEKELILING, 1974
>
> 1. ...
>
> 2. ... Campuran bateri terbakar ini telah diputuskan ... sebagai buangan terjadual di bawah kod SW422...
>
> 3. ... dengan kuasa yang diberikan oleh Ketua Pengarah ... di bawah Seksyen 49... tuan dengan ini diberi Notis Arahan yang diperuntukkan di bawah Seksyen 31(1)(g):

3.1 ... melupuskan campuran bateri terbakar tersebut ke premis Kualiti Alam Sdn Bhd dengan kadar segera.

[15] The applicant contended that what the respondent meant by 'disposal to the premises of Kualiti Alam Sdn Bhd' relates to the following:

(a) the batteries must be disposed of by total destruction, by landfill or incineration, as opposed to recycling; and

(b) the above said disposal by total destruction must be carried out in the facilities/premises of Kualiti Alam Sdn Bhd and no others.

[16] The respondent subsequently issued a second letter dated 5 May 2016 addressed to TNB in essence reinforcing the above said earlier letter dated 8 April 2016.

[17] The applicant refused to dispose of the affected batteries to Kualiti Alam Sdn Bhd as required by the respondent. Hence, this application before this court for judicial review of the above said two letters, materially premised on the ground that 'there is a serious impropriety in issuance of the two letters' and that:

there is no reason why the respondent must specifically prefer ... Kualiti Alam Sdn Bhd as the only contractor to undertake this task, despite other contractors being equally licensed by the respondent for the same purpose.

PRELIMINARY OBJECTION

[18] Learned senior federal counsel representing the Attorney General's Chambers raised a preliminary objection that the applicant has no locus standi to file this application as it is not 'a person who is adversely affected by the decision' of the respondent within the meaning of O 53 r 2(4) of the Rules of Court 2012 ('the ROC 2012').

DECISION

[19] The facts clearly shows that:

(a) the letter dated 8 April 2016 was addressed to Daelim Malaysian Sdn Bhd (exh 'C4' of the applicant's affidavit) and Daelim Malaysia Sdn Bhd is the party who will be subjected to penal sanction as evidenced at para 5 of exh 'C4' of the applicant's affidavit; and

(b) the letter dated 5 May 2016 was addressed to TNB Manjung Five Sdn Bhd (exh 'C4' of the applicant's affidavit) who is temporarily storing the scheduled waste and was instructed to dispose of the scheduled waste before 18 May 2016.

[20] The Federal Court case of *Malaysian Trade Union Congress & Ors v Menteri Tenaga, Air dan Komunikasi & Anor* [2014] 3 MLJ 145 held as follows:

At p 164:

[59] We now deal with the issue of whether the second to the 14th appellants are persons adversely affected by the Minister's decision to reject the first appellant's application for the disclosure of and access to the two documents. They did not make a similar request to the Minister for the disclosure of and access to the two documents. We agree with the majority's view that their dissatisfaction with the decision of the Minister in rejecting MTUC's application did not make them persons who were 'adversely affected' by the Minister's decision falling within the ambit of O 53. They were clearly strangers to the said application. In our view they had not satisfied the test of threshold locus standi under O 53 r 2(4) of the RHC and as such they were not entitled to the reliefs sought in their application.

[21] Based on the facts of this case, in my view the person affected by the decision of the respondent is 'Daelim Malaysia Sdn Bhd' being the party that has been directed by the respondent to dispose the scheduled waste to Kualiti Alam Sdn Bhd on or before 9 May 2016.

[22] It is not disputed that the Director General of Environmental Quality has no knowledge of the agreement entered between:

(a) the applicant and Daelim Malaysia Sdn Bhd for the disposal of the scheduled waste as appended at exh 'C1' of the applicant's affidavit; and

(b) the applicant and Globecycle Group of Companies for the disposal of the scheduled waster as appended at exh 'C3' of the applicant's affidavit.

[23] I am of the view that the applicant does not fulfill the criteria of and adversely affected person as prescribed under O 53 r 2(4) of the Rules of Court 2012 in light of the Federal Court decision in the case *Malaysian Trade Union Congress & Ors v Menteri Tenaga, Air dan Komunikasi & Anor.*

[24] The person who would be adversely affected by the decision of the respondent is Daelim Sdn Bhd as they bear the consequences of being imposed a fine and/or imprisonment for failing to comply with the order as evidenced at para 5 of the first letter dated 8 April 2016.

CONCLUSION

[25] Based on the above reasons, I refused leave and encl (1) is dismissed with no order as to costs. In my view, the applicant had not satisfied the rest of threshold under O 55 r 2(4) of the RHC.

Application dismissed.

Reported by Afiq Mohamad Noor